No. 84-1888

FILED

In The

Supreme Court of the United States

October Term, 1985

Donald T. Regan, Secretary of the Treasury, et al.,
Appellants,

v.

Taxation With Representation of Washington,
Appellee.

On Appeal From The United States Court of Appeals
For The District of Columbia Circuit

BRIEF OF THE AMERICAN LEGION AS AMICUS CURIAE

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. 81-2338

DONALD T. REGAN, SECRETARY OF THE TREASURY, ET AL.,

v. *Appellants,*

TAXATION WITH REPRESENTATION OF WASHINGTON,

Appellee.

On Appeal From The United States Court of Appeals For The District of Columbia Circuit

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BRIEF OF THE AMERICAN LEGION AS AMICUS CURIAE

INTEREST OF AMICUS CURIAE [1]

The American Legion, chartered by Special Act of Congress in 1919, Pub. L. No. 66-47, 41 Stat. 284, is the single largest organization of veterans in the United States. Its membership is open to those who have served in the military services during World War I, World War II, or the Korean or Vietnam conflicts, provided that they were honorably discharged or separated, or continued to serve honorably. 36 U.S.C. § 45. The Legion's criteria for membership, set forth in this statute, have been amended from time to time by Congress. See 36 U.S.C. § 51. In addition to its 2,400,000 members, the Legion

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[1] Pursuant to Supreme Court Rule 36, written consent to the filing of this Brief has been obtained from counsel for all parties, and the letters of consent have been filed with the Clerk of the Court.

is made up of 15,800 posts and 58 departments located in states across the land and in seven foreign countries.

The Legion and its subsidiaries are exempt from federal income taxation under § 501(c)(19)[2] of the Internal Revenue Code of 1954 (as amended), 26 U.S.C. § 501(c)(19), and contributions to the Legion are deductible for income, estate and gift tax purposes, 26 U.S.C. §§ 170, 2055, 2522. The Legion has a legislative office in Washington, D.C. and a legislative program relating to specified issues of direct interest and benefit to its members. And the Legion receives a small portion of its income from deductible bequests or contributions.

In its *en banc* decision, the Court of Appeals recognized that its ruling vitally affected the interests of veterans' groups. After concluding that there was a constitutionally objectionable "differential" in tax treatment of § 501(c)(3) organizations and veterans' organizations, the Court of Appeals concluded that "[t]he most obvious remedy—striking down the Section 501(c)(3) lobbying limitation that now governs Taxation [appellee]—poses the most obvious problems," in view of Congress' intent to regulate the amount of tax deductible dollars going to § 501(c)(3) organizations for lobbying. App. 73a.[3] Stating that this Court had "recognized" that "[unconstitutional] unequal treatment" could be cured by taking benefits "away from a preferred group," it remanded the case to the District Court with a strong suggestion that "the preferential treatment now accorded

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[2] Prior to the enactment of § 501(c)(19), the Legion was recognized as tax exempt under § 501(c)(4). Since 1921, contributions to the Legion and its posts and auxiliaries have been deductible from the taxable income of the contributors. Pub. L. No. 67-98, § 214(a)(11), 42 Stat. 227, 241 (1921).

[3] Citations to the decision of Court below, reprinted in the Appendix to the Government's Jurisdictional Statement, are cited as "App. ——."

the lobbying of veterans' organizations" be eliminated. App. 75a-76a.

If this Court were to affirm the Court of Appeals' conclusion that any disparity in treatment between veterans' groups and other non-profit organizations is in fact unconstitutional, or its further conclusion that the "most logical" remedy would be to impose restrictions on lobbying activity by veterans' groups which Congress did not enact, then in either event the Legion's current tax status and freedom to carry on legislative activity without governmental regulation would be substantially impaired. Such a result would be incompatible with the historical record concerning Congress' reasons for treating veterans' groups differently from other tax-exempt organizations and indeed, with the general recognition that, because of their unique role in our society, veterans and veterans' organizations may and should be subject to special regulation and recognition. Amicus sought to protect its interests in this matter by moving to intervene in the Court of Appeals and in this Court. Both motions were denied. 102 S. Ct. 2952 (1982); *TWRW v. Regan*, No. 79-1464 (D.C. Cir. May 27, 1982). Nevertheless, it is plain for all the reasons set forth above that Amicus has a vital interest in the disposition of this case.

STATUTES INVOLVED

In addition to the statutes set forth in Appendix D of the government's Jurisdictional Statement, Section 7428 of the Internal Revenue Code of 1954 (26 U.S.C.) is at issue here. In relevant part it provides that:

> (a) Creation of remedy.—In a case of actual controversy involving—
>
> (1) a determination by the Secretary—
>
> (A) with respect to the initial qualification or continuing qualification of an organization as an organization described in section 501(c)(3) which is exempt from tax under section 501(a)

> or as an organization described in section 170 (c) (2), . . .
>
> upon the filing of an appropriate pleading, the United States Tax Court, the United States Court of Claims, or the district court of the United States for the District of Columbia may make a declaration with respect to such initial qualification or continuing qualification or with respect to such initial classification or continuing classification. . . .
>
> (b) Limitations.—
>
> (1) Petitioner. A pleading may be filed under this section only by the organization the qualification or classification of which is at issue. . . .

SUMMARY OF ARGUMENT

I. Tax code classifications subject to equal protection challenge will generally be sustained if they rationally further a legitimate purpose. Under this standard of review, the numerous differences in treatment under the Internal Revenue Code between veterans' organizations and other exempt organizations, including restrictions on lobbying activity, plainly pass constitutional muster. The predicate for the Court of Appeals' contrary holding was a simple misreading of the legislative history, which shows that in 1934, Congress deliberately and intentionally limited the lobbying restrictions to those organizations now set forth in § 501(c)(3). This congressional decision has been adhered to, following legislative hearing and inquiry, through recent major revisions of the lobbying limits imposed on § 501(c)(3) organizations. The Court of Appeals' erroneous conclusion that traditional equal protection scrutiny will not suffice here is inconsistent with this Court's decisions that government subsidies affecting fundamental rights need not meet the "compelling interest" test.

Even a more rigorous review of this classification will sustain the legislative judgment that veterans' organiza-

tions simply do not pose the kinds of dangers with which Congress was concerned in imposing lobbying restrictions on § 501(c)(3) organizations—to wit, permitting essentially private interest lobbying by wealthy individuals who, by virtue of substantial deductible contributions, could control small § 501(c)(3) organizations lacking effective membership control. The major veterans' organizations are congressionally chartered and subject to special reporting requirements and congressional oversight not applicable to § 501(c)(3) organizations. Such organizations tend to have strict internal controls to assure that their constituent members' views are fairly represented; the Legion, for example, will not lobby on any issue unless its membership has formally authorized its leadership to take such action. Because the lobbying activity of the American Legion, like other veterans' groups, reflects the welfare and interests of veterans—a large and substantial group—it cuts across racial, political, and occupational lines, and many other special interest criteria. Moreover, veterans' organizations like the American Legion, and unlike many § 501(c)(3) organizations, do not depend for their financial support on deductible contributions from small groups of wealthy individuals, or from a floating general public which cannot demand accountability, but rather are principally supported by membership contributions.

A substantial basis thus existed for Congress' conclusion that the special dangers posed by § 501(c)(3) organizations engaging in lobbying were not present in lobbying by veterans' organizations. Regardless of whether the standard of review is that of rationality, or something more rigorous, no equal protection violation is present.

II. The remedial order of the Court of Appeals was in any event erroneous. This case was brought under § 7428 of the Internal Revenue Code, which limits the relief that may be granted to a declaratory judgment on the issue of whether the Service's denial of an application

for § 501(c)(3) status, by the particular organization whose qualification is at issue, was proper. If the legislative scheme *were* unconstitutional, appellee would simply have been entitled to a declaratory judgment that its application for exemption had been wrongly denied. It would then be left to Congress to determine whether it wished to remedy the unconstitutionality perceived by the Court of Appeals by eliminating the § 501(c)(3) lobbying restrictions, or by extending restrictions to veterans' organizations, or through some other means.

The Court of Appeals' remand order not only contravenes § 7428, but suffers constitutional defects. The Court of Appeals has virtually commanded the District Court to ignore the constitutional limitations on its authority, invade the prerogatives of the legislative branch, and engage in the kind of policy judgments, legislative hearings, and social balancing that are preeminently legislative tasks. It has done so, moreover, in a matter in which the interests of those groups likely to be directly and adversely affected by the remedy advocated by the Court of Appeals have never had an opportunity to participate as parties in the presentation and development of the issues. By urging a remedy that is detrimental to nonparties, and not even sought by any of the parties to the litigation, the Court of Appeals has egregiously overstepped limitations on its authority imposed by Article III of the Constitution.

ARGUMENT

I. THE COURT BELOW ERRED IN HOLDING THAT THE LOBBYING RESTRICTIONS OF § 501(c)(3) OF THE INTERNAL REVENUE CODE OFFEND EQUAL PROTECTION PRINCIPLES BECAUSE CONGRESS HAS NOT ENACTED SIMILAR RESTRICTIONS ON VETERANS ORGANIZATIONS.

A. The Court Of Appeals Erred In Applying The Compelling Interest Standard To These Tax Classifications.

This Court has consistently held that legislative classifications in the tax code normally will be sustained against equal protection challenge if such classifications bear a rational relationship to a legitimate governmental purpose. *E.g.*, *Kahn v. Shevin*, 416 U.S. 351, 355 (1974); *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359-65 (1973); *United States v. Maryland Savings-Share Insurance Corp.*, 400 U.S. 4, 6 (1970); *Rogers v. County of Hennepin*, 240 U.S. 184, 192 (1916). As the Court has frequently emphasized:

> The broad discretion as to classification possessed by the legislature in the field of taxation has long been recognized . . . [and] the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes.

San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 40-41 (1973) (quoting *Madden v. Kentucky*, 309 U.S. 83, 87-88 (1940)). Such a standard of review is virtually required to avoid massive judicial tinkering with the innumerable legislative judgments embodied in the federal tax code, including those relating to the twenty-two different categories of exempt organizations set forth in § 501(c).

Singling out from this group only § 501(c)(3) and veterans' organizations,[4] the Court of Appeals suggested

that Congress' failure to apply to the latter the identical lobbying restrictions imposed on the former was not only inexplicable, but inadvertent, and thus could not pass muster even under the "rationality" test. This was a complete misreading of the legislative history, which shows that Congress has acted deliberately and with good reason to impose lobbying restrictions only on § 501 (c) (3) organizations.

Prior to 1934 there were no statutory limits on lobbying by any exempt organization.[5] During Senate debate of the provisions in the 1934 Revenue Act permitting deductions for charitable contributions, an amendment was proposed to restrict those organizations now included in § 501(c)(3) from engaging in substantial lobbying or partisan political activities. The amendment was prompted by the Senate Finance Committee's observation that "there are certain organizations which are receiving contributions in order to influence legislation and carry

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[4] The dichotomy in treatment perceived by the Court of Appeals between veterans' and § 501(c)(3) organizations is illusory in the context of the numerous distinctions in the Code. Thus, fraternal benefit organizations, exempt under § 501(c)(8) without regard to their lobbying activities, may receive deductible contributions for certain charitable purposes. 26 U.S.C. §§ 170(c)(4), 2522(a)(3). *But see* 26 U.S.C. § 2055(a)(3). The tax code distinguishes among veterans' organizations themselves, *comp.* 26 U.S.C. § 2055(a)(4) *with id.*, § 2522(a)(4). And a broad range of organizations qualify for exemption under § 501(c)(4) and may engage in unrestricted lobbying activities, funded by income exempt from taxation, though they cannot receive deductible contributions. On the other hand, among § 501(c)(3)'s, private foundations, unlike public charities, cannot engage in any lobbying without incurring tax liability. 26 U.S.C. § 4945.

[5] Revenue regulations took the position that the requirement that an exempt entity be organized and operated *exclusively* for exempt purposes totally precluded political activity. 2 Cum. Bull. 152, 154 (1920). However, in *Slee v. Comm'r*, 42 F.2d 184, 185 (2d Cir. 1930), the court left room for some "agitation" which "is ancillary to the end in chief." The 1934 amendment, discussed in text, has been regarded as codifying this formulation.

on propaganda. The committee thought there ought to be an amendment which would stop that . . ." 78 Cong. Rec. 5959 (1934). Some senators felt that the amendment should be extended to all categories of organizations eligible to receive deductible contributions, including "war organizations", *id.* at 5861, but others felt that even in its more limited form, the amendment was drawn too broadly to cover organizations "not acting from selfish motives" where there was less danger of their simply "advanc[ing] the personal interests of the giver of money." *Id.* Following these discussions, the Senate passed the lobbying amendment without change and, after the House deleted reference to partisan politics, it was enacted into law. Since the precise question of an extension of the restriction to other organizations was considered and rejected, it can only be concluded that Congress acted intentionally not to apply the restrictions to all such organizations.

Congress has recently re-examined and adhered to this decision. In 1976, following several years of hearings, Congress enacted § 501(h) of the tax code, 26 U.S.C. § 501(h). Rather than adopting proposals to substantially eliminate the lobbying restrictions on § 501(c)(3) organizations, or to extend such restrictions to other entities, Congress decided to permit most § 501(c)(3) organizations to elect to expend specified percentages of their budget on lobbying expenditures, thus liberalizing, but not entirely eliminating, prior tax code treatment of such lobbying.[6] During the same time frame, moreover,

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[6] *See generally Influencing Legislation By Public Charities, Hearings Before the House Ways and Means Comm.*, 94th Cong., 2d Sess. 61 (1976) [hereinafter cited as "Hearings 1976"]; *General Tax Reform Hearings Before the House Ways and Means Comm.*, 93d Cong., 1st Sess. (1973) [hereinafter cited as "Hearings 1973"]; *Legislative Activity By Certain Types of Exempt Orgs., Hearings Before the House Ways and Means Comm.*, 92d Cong., 2d Sess. (1972) [hereinafter cited as "Hearings 1972"]. The 1976 legislation followed an earlier review of lobbying activities by exempt organizations that resulted in a virtual total ban on lobbying by private foundations in 1969. *See* 26 U.S.C. § 4945.

Congress created a specific statutory exemption for veterans' organizations, 26 U.S.C. § 501(c)(19), in order to exempt such organizations from "unrelated business income tax" on income received from bona fide members' insurance programs. Congress specifically indicated, however, that such sheltered income could not be used for "lobbying." S. Rep. No. 1082, 92d Cong., 2d Sess. 5 (1972).

Congress has thus acted deliberately over nearly half a century to regulate the flow of tax-deductible dollars through exempt organizations for lobbying purposes, focusing particularly on § 501(c)(3) organizations where the danger for large-scale abuse seemed greatest, and imposing a variety of restrictions on other exempt organizations in response to particular needs and problems. Especially under traditional analysis, the Equal Protection Clause permits the government to regulate "one step at a time," addressing itself to "the phase of the problem which seems acute." *Buckley v. Valeo*, 424 U.S. 1, 105 (1976), (quoting *Williamson v. Lee Optical, Inc.*, 348 U.S. 483, 489 (1955)). It "need not run the risk of losing an entire remedial scheme simply because it failed, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked." *McDonald v. Board of Election*, 394 U.S. 802, 809 (1969). Even if the statute focuses upon " 'one phase of one field and [applies] a remedy there, neglecting the others' . . . [s]o long as its judgments are rational, and not invidious, the legislature's efforts to tackle the problems . . . are not subject to a constitutional straitjacket." *Jefferson v. Hackney*, 406 U.S. 535, 546 (1972); *see also Clements v. Fashing*, 102 S. Ct. 2836 (1982).

The Court below, while conceding that the unavailability of the benefits of § 501(c)(3) status to appellee does not impose a direct burden on appellee's First Amendment rights but only "involves unequal levels of governmental subsidy of First Amendment rights," App. 39a, nevertheless held that a strict level of scrutiny should be

applied and that the distinctions drawn by § 501(c)(3) could be sustained only if they served a "substantial governmental interest [and were] . . . narrowly tailored to serve that end." *Id.* at 45a. That conclusion is erroneous. This Court has on several occasions in recent years addressed this question and, in each case, ruled that differing levels of governmental subsidy or benefits relating to the exercise of fundamental rights need not be subject to strict scrutiny under the Equal Protection Clause.

For example, in *Maher v. Roe*, 432 U.S. 464 (1977), the Court had to determine whether withholding public health benefits from women who chose to exercise the fundamental right to a first trimester abortion, while providing benefits for expenses incident to childbirth, constituted an invidious burden on that right warranting close judicial scrutiny. The Court concluded that it was "abundantly clear that . . . [the government] is not required to show a compelling interest for its policy choice to favor . . . [one permissible activity] any more than . . . [it] must so justify its election to fund public but not private education." *Id.* at 478. *Accord*, *Harris v. McRae*, 448 U.S. 297, 318, 322-26 (1980) (decision whether to subsidize the exercise of a fundamental constitutional right is one for Congress and "not a matter of constitutional entitlement"). As this Court held in considering an equal protection challenge to denial of public financing to some presidential candidates but not others, since the discrimination involved there was limited to "denial of the enhancement of opportunity to communicate with the electorate that the [statute] afford[s] eligible candidates," *Buckley v. Valeo*, 424 U.S. 1, 94-95 (1976), it was not required to meet the "compelling interest" scrutiny applied to ballot access restrictions.

A fortiori, in this case, where the discrimination complained of is not the government's failure to provide a direct subsidy to one type of organization that is provided to another, but rather its failure to provide an in-

direct incentive to private giving by offering tax benefits to prospective donors, the standard of strict scrutiny must be rejected. A very wide range of government programs provide subsidies, benefits, or incentives, direct or indirect, that may enhance the opportunities of one group as opposed to another in the exercise of important constitutional rights, including First Amendment rights. If each of these governmental classifications must be justified by a compelling state interest narrowly implemented, despite the absence of any direct restriction on constitutional rights, the courts would be faced with the detailed review of a staggering array of legislation. Nowhere is this better illustrated than in the instant case; the tax code's treatment of exempt organizations alone reflects a complex pattern of legislative judgments relating to a number of historical governmental concerns arising from problems encountered in extending tax benefits to such organizations. If rigorous scrutiny is applicable to every difference in indirect tax benefits or incentives impacting important constitutional rights, the tax code will hardly be able to escape a most thorough judicial rewriting.

B. Even Under A Rigorous Standard Of Review, The Tax Code Classifications Between Veterans Groups And § 501(c)(3) Organizations Pass Muster.

Even if the Court of Appeals was correct in applying some degree of heightened scrutiny, the difference in treatment involved here is justified because (1) the lobbying restriction on § 501(c)(3) organizations reflects a strong government policy to guard against the abusive use of deductible contributions for lobbying purposes, and (2) Congress legislated in a reasonably narrow and tailored manner, since the dangers Congress perceived in § 501(c)(3) organizations' lobbying are not posed to the same degree by veterans' organizations.

The permissible purposes for which a § 501(c)(3) organization may be established are broad indeed; the

number of such groups is large; and the reporting and disclosure requirements imposed on most such organizations are minimal. As disussed above, Congress concluded that, in order to prevent such groups from functioning as mere conduits for the use of tax-deductible funds for lobbying to "advance the personal interests" of a few wealthy givers, some restrictions were necessary. Both this Court and the lower federal courts have recognized Congress' "sharply defined national policy" to guard against the use of substantial tax-deductible funds for lobbying activities. *Cammarano v. United States*, 358 U.S. 498, 508 (1959); *accord Haswell v. United States*, 500 F.2d 1133, 1150 (Ct. Cl. 1974), *cert. denied*, 419 U.S. 1107 (1975) ("[C]ongressional interest in prevention of the use of tax funds to support lobbying is compelling.")

The history of Congress' recent decision to mitigate the lobbying restrictions on § 501(c)(3) organizations demonstrates its particularized concerns about the dangers such organizations might pose to this important governmental policy absent any such restrictions. Congress was concerned, specifically, that due to their potentially flexible membership and loose internal regulations,[7] and the lack of functional reporting requirements imposed upon them,[8] these organizations were likely to become

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[7] *See* Hearings 1972, *supra* note 6, at 9 (remarks of Edwin Cohen, Ass't Sec'y for Tax Policy, Dept. of the Treasury; difficulty of defining membership of Section 501(c)(3)s); *id.* at 78-79 (remarks of Rep. Waggoner; looseness of membership criteria and lax internal review procedures of 501(c)(3)s).

[8] *See* Hearings 1972, *supra* note 6, at 9 (remarks of Edwin Cohen, Treasury official; noting laxity of disclosure requirements on lobbying by § 501(c)(3)s); *Influencing Legislation by Public Charities, Hearing Before the Comm. on Ways and Means, House of Representatives*, 94th Cong., 2d Sess. (1976) (hereinafter "Hearings 1976") at 15 (remarks of Rep. Schneebeli and William M. Goldstein, Dep. Ass't Sec'y of the Treasury; need for disclosure requirements for § 501(c)(3)'s); *id.* at 46 (remarks of Elvis Stahr; § 501(h) valuable because it would improve "monitoring the legislative efforts of public charities").

conduits for the advancement of the interests of wealthy contributors [9] and to front lobbyists whose statements "really represen[t] their own views rather than the people they profess to represent." [10]

That Congress did not perceive similar dangers in the operation of veterans' organizations is hardly surprising. Veterans' organizations are relatively fewer in number and, for the most part, were formed for specific and limited purposes, with well-defined membership and relatively tight internal controls on lobbying activities. Their membership and strength is not only likely to remain substantial irrespective of deductibility, but that membership

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[9] Thus, the ABA Section on Taxation stated in its recommendation to Congress that:

> Since the charitable deduction means more to the rich than the poor and the former have more money anyway to give away to charity, the rich tend to play a larger role than the poor in influencing the policies of charitable organizations (especially private foundations): thus, permitting deductible charitable contributions to be used for lobbying purposes may extend the legislative influence of the rich as opposed to the poor. Finally, particular taxpayers may not want the tax exempt funds of a charity to be used to support particular legislation of which they disapprove.

Hearings 1972, *supra*, note 6, at 171; (*reprinted in* Hearings 1976, *supra* n.6, at 68); Hearings 1976 at 18 (Rep. Duncan: fear that § 501(h) "written for a few special groups").

[10] Hearings 1973, *supra* note 6, at 1496; *see also* Hearings 1972, *supra* n.6, at 80-81 (remarks of Rep. Waggoner):

> What I am afraid of is that as a representative of the national assembly, if you are granted the privilege of spending any amount of money that you people have available to you for disbursement for political purposes to influence Government, that . . . you are . . . going to be speaking for yourself and voicing your personal opinions without much regard for the people back home that you supposedly represent. There are too many organizations in this country today who do just exactly that.

Id. at 82 (involvement in "democratic process" through lobbying necessitates "democratic" representation of membership by § 501(c)(3)'s); *id.* at 227.

transcends partisan political, ethnic, religious or occupational lines.[11] The major veterans' organizations, which are federally chartered, are subject to special reporting requirements concerning their proceedings and finances. Thus, Congress had substantial grounds to conclude that the need for lobbying restrictions on veterans' organizations had not been demonstrated.

The nature and activities of the American Legion, the largest of all veterans' organizations in membership and budget, amply bear out this congressional judgment.[12] The Legion was formed by returning World War I veterans for specific purposes relating to promoting the rights and interests of veterans, particularly disabled veterans or others disadvantaged by their military service, and widows and orphans of those who had died in World War I. Virtually at its inception, the Legion was chartered by Congress. The Charter, 36 U.S.C. §§ 41-51, specifically enumerates the Legion's organizational powers and purposes, has been amended a number of times by Congress, and provides that it can be revised by Congress at any time. *See* 36 U.S.C. § 51. Thus, by contrast to most § 501(c)(3) organizations, the Legion (and all other major veterans' organizations) have purposes that are not only historically determined, but also specified and limited by Congress, and subject to its direct review.

Moreover, Congress and the public are in a particularly good position to scrutinize the sources of the Legion's

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[11] *Proposals for Administrative Changes In Internal Revenue Service Procedures, Hearings Before the House Ways and Means Oversight Comm.*, 94th Cong., 1st Sess. (1975) [hereinafter "Hearings 1975"] at 133-34 (ABA report on effects of § 501(c)(3) status determination; veterans' groups distinguished from § 501(c)(3)'s in that "contributions to [the former] type of organization are typically made by a membership group which is likely to continue to support the organization even if a question is raised as to its [deductible] status.")

[12] If this case were remanded to explore these areas, amicus would, if permitted, make a proffer of proof in the District Court to establish these and the other facts set forth herein.

funds and the uses to which they are put since, by law, the Legion must have an annual audit conducted by an independent accounting firm for presentation to Congress, and must also file with Congress a complete report of its proceedings for the preceding year. 36 U.S.C. §§ 49, 1101-03. The annual reports of the Legion's conventions, including reports of all divisions and departments, are published as official congressional documents.[13] And, of course, Congress is in a position to be knowledgeable concerning veterans' lobbying since it is primarily before Congress that such groups lobby. Thus, Congress is apprised on an annual basis of the detailed information necessary to determine the extent, if any, to which tax-deductible funds are in fact being used by the Legion for lobbying, and is able to take remedial action if abuse occurs.

In fact, contrary to the Court of Appeals' suggestion based on a ten-year-old law review article, App. 23a,[14] the Legion does not pose the problems of an organization aggressively using tax deductible money for lobbying. The Legion receives a negligible proportion of its budget from deductible contributions, and spends a relatively

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[13] *See, e.g.*, H.R. Doc. No. 131, Proceedings of 63d National Convention of the American Legion, 97th Cong., 2d Sess. (1981).

[14] The majority opinion contains other inaccuracies concerning the American Legion (not surprisingly, in view of the parties' failure to present evidence on the activities of veterans' groups). For example, the majority implies that the Legion's congressional appearances in hearings on postal services are outside the scope of its proper purposes. App. 23a-24a. But because of the Legion's publication of a monthly magazine with an estimated readership of 7 million, it has a direct interest in postal costs and services for mailings by nonprofit organizations.

In addition to a relatively small amount of lobbying, focussed primarily though not exclusively on veterans benefits and Veterans Administration issues, the Legion is involved in a wide range of public service activities consistent with its charter such as Boys State and Boys Nation, providing scholarships to high school students, providing assistance in administrative proceedings affecting veterans, and on-site inspection of the V.A.'s 172 hospitals.

small portion of its total budget on lobbying efforts. The Legion's principal source of funds is the payment of modest annual dues by each of its 2,400,00 members. Other substantial sources of income include investment income, and income derived from its group term life insurance plan, the American Legion Life Insurance Plan. The Legion has a policy of not permitting the solicitation *or acceptance* of charitable contributions without the specific consent of its Executive Committee. Ordinarily, the Legion does not solicit contributions at the national level for its *own* purposes. It has, however, on a number of occasions conducted solicitations for tax-deductible contributions *to be given to others* for public or quasi-public purposes.[15]

Similarly, only a small percentage of the Legion's funds —less than the percentage ceiling imposed on a § 501(c)(3) organization under § 501(h)—are used for lobbying activities. In fact, of the Legion's 1982 budget approximating $23 million, only $314,284 is allocable to the legislative division. Of this, the major portion is allocated to employee salaries and benefits—a relevant fact because the most substantial part of the activities of this division involve responding to specific requests from congressional committees for testimony by Legion representatives. Thus, in the 97th Congress, the American Legion's National Legislative Commission presented testimony or written statements to be included in committee records on 85 occasions. Of these 85 official statements, 83 were presented in response to congressional committees' letters of request. *Cf.* 26 U.S.C. § 501(h)(2)(A); 26 U.S.C. § 4911(d)(2)(B) ("lobbying expenditures" counted toward

[15] For example, the Legion raised $1.2 million in deductible contributions from its membership for the Vietnam Veterans' Memorial on the mall; $500,000 for the Bicentennial, which it gave the government for production of a replica of the Freedom Bell; and in the past raised over $1 million for the Cancer Foundation. In addition, the Legion receives bequests, often designated for specific purposes (such as "children and youth"), which are required to be reported individually to its Executive Committee.

§ 501(h) limits do not include providing technical assistance in response to a request from a governmental body).

Congress' concern that organizational lobbyists would not in fact represent the views of large, loosely organized memberships in the § 501(c)(3) context, is similarly inapplicable to veterans' organizations. The American Legion will neither testify nor otherwise engage in lobbying activities unless its membership has, at an annual convention, formally adopted a specific resolution on the subject matter in question and thus authorized legislative action by the Legion. This requirement is rigorously adhered to in order to assure that it is the views and interests of the Legion's members, and not simply those of a few leaders or contributors, that are communicated to the Congress.[16]

Finally, Congress was undoubtedly aware of the quantitative difference between the potential large-scale use of deductible contributions for lobbying by § 501(c)(3) organizations, and any corresponding danger in the case of veterans' organizations. As even the Court of Appeals recognized, according to the best available figures there are approximately *fifteen* times as many § 501(c)(3) organizations as veterans' organizations and, more important, in 1978, contributions, gifts and grants to all § 501(c)(3) organizations totalled about $22 billion, nearly 1500 times the $16.7 million given to veterans' organizations in that year. App. 73a. This substantial disparity, when viewed in combination with the unique char-

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[16] Membership approval is a very significant check on improper lobbying efforts because veterans are a large and substantial group, cutting across racial, political and geographic lines, and lines of wealth. The American Legion, moreover, under its charter and constitution, and by uniform practice, has absolutely no involvement, direct or indirect, in electoral politics. *See* Constitution and By-Laws of the American Legion, art. II, § 2 ("The American Legion shall be absolutely nonpolitical and shall not be used for the dissemination of partisan principles nor for the promotion of the candidacy of any person seeking public office or preferment.").

acteristics of veterans' organizations, as a practical matter precludes their posing a significant threat to the governmental interests involved in the lobbying restrictions on § 501(c)(3) organizations, and demonstrates convincingly why Congress saw no need to extend such restrictions to veterans' groups.

Since a substantial basis exists for the tax code's distinctions between these exempt organizations, the Court of Appeals' finding of an equal protection violation was erroneous.

II. THE REMAND ORDERED BY THE COURT OF APPEALS EXCEEDS THE SCOPE OF THE DISTRICT COURT'S JURISDICTION PURSUANT TO 26 U.S.C. § 7428 AND RAISES CONSTITUTIONAL PROBLEMS.

This action was filed pursuant to § 7428 of the Internal Revenue Code, 26 U.S.C. § 7428. This special jurisdictional statute was enacted in 1976 to carve out a very narrow exception to the general rule, embodied in both the Anti-Injunction Act, 26 U.S.C. § 7421(a), and the Declaratory Judgment Act, 28 U.S.C. § 2201, that taxpayers can only challenge the Service's treatment of them in a suit for refund in the district court or Court of Claims, or in the Tax Court, after the IRS has assessed a deficiency. The Court of Appeals' remand order here appears inconsistent with the jurisdictional predicate for this action and the limitations which Congress carefully imposed on the federal courts' exercise of jurisdiction pursuant thereto, and thus raises an important issue for this Court's review.

Section 7428 is an unusual example of congressional qualification of federal court jurisdiction. A complaint under the section may be filed "only by the organization the qualification or classification of which is at issue," and must relate to a "determination" by the IRS relating to that organization's "initial . . . or continuing qualification" under § 501(c)(3), 26 U.S.C. § 7428(b)(1). Most im-

portant for these purposes, Congress set forth with great precision the nature of the remedy it was authorizing. Subsection (a) of § 7428 is headed "Creation of Remedy" and states: "[U]pon the filing of an appropriate pleading, . . . the district court of the United States for the District of Columbia may make a declaration with respect to such initial qualification or continuing qualification. . . ." The plain language of this statute, which must provide at least the starting point for analysis, *e.g.*, *Touche Ross & Co. v. Redington*, 442 U.S. 560, 569 (1979); *Ford Motor Credit Co. v. Cenance*, 452 U.S. 155, 158 n.3 (1981), thus indicates that Congress contemplated that, if a plaintiff prevailed in its challenge to the Internal Revenue Service's action in denying an exemption application, the court would simply issue a declaratory judgment that the Service had acted improperly.

This conclusion is reinforced by the emphatic limitation of petitioners under § 7428 to organizations whose "qualification or classification" is at issue. *See Cheng Fan Kwok v. INS*, 392 U.S. 206, 213 (1968) (jurisdictional statute "must be construed both with precision and with fidelity to the terms by which Congress has expressed its wishes"). Had Congress wished to permit § 7428 litigation to provide a vehicle for taxpayer challenges to the IRS' treatment of other taxpayers, this limitation would not have been included. See S. Rep. 938, 94th Cong., 2d Sess., 588, 587 n.6. The structure of the statute, then, as well as its plain language, demonstrates that the relief contemplated by the Court of Appeals is entirely inconsistent with that provided for by Congress.

The legislative history likewise supports the conclusion that the remedial jurisdiction of the district court under § 7428 is very limited. Congress sought to address a particular problem in this legislation—to wit, the inability of nonprofit organizations claiming to be entitled to § 501(c)(3) status to survive without the economic benefit of deductible contributions in the event that the Service denied or revoked such status. Under the general limitations ap-

plicable to taxpayer litigation with the Service, such an organization's only remedy was lengthy refund litigation in the Court of Claims or district court, or a deficiency protest in the Tax Court. Such litigation left the organization's status as a recipient of deductible contributions in jeopardy, for contributions might simply dry up or the organization might never raise enough income to incur a tax liability permitting it to litigate the question. *See Alexander v. "Americans United" Inc.*, 416 U.S. 752 (1974); *Bob Jones University v. Simon*, 416 U.S. 725 (1974). This Court, while indicating its sympathy for the plight of § 501(c)(3) organizations in such circumstances, rejected arguments that it could carve out a judicially created exception to the established mechanisms for litigating such challenges, recognizing that *only* Congress could make the necessary policy choices inherent in establishing such a remedy. 416 U.S. at 750.

The expedited review procedure thereafter made available by Congress to § 501(c)(3) organizations in § 7428 to obtain a declaratory judgment as to their tax status constituted a congressional recognition of the unique problems faced by such organizations. But Congress sought to limit the potential disruptiveness of such suits to the orderly administration of the tax code by specifically rejecting proposals to permit district courts to issue injunctive relief, and adopting the ABA's recommendation that *only* § 501(c)(3), and *not* other § 501(c) organizations, be permitted to take advantage of this expedited procedure. *See* Tax Section Recommendation No. 1974-17, reprinted in Hearings 1975, *supra* n.11, at 133-34; Hearings 1975, *supra* n.11, at 126 (testimony of Alan Morrison). The intent of the law was simply to permit such organizations to obtain judicial review of their entitlement to exempt status in advance of incurring tax liability. So, with regard to remedies, the successful taxpayer in a § 7428 case—instead of obtaining a refund, or removing

a deficiency notice—would obtain a declaratory judgment that it was entitled to exempt status.

Until now, the federal courts have recognized congressional intent that § 7428 not interfere with the administration of the tax code by any radical expansion of the procedures and remedies normally available to litigants against the Service,[17] and have also been rigorous in adhering to the substantive limitations on the subject matter of litigation that may be brought under § 7428.[18] Indeed, the same Court of Appeals that decided the instant case has, in another case, implicitly recognized that the limited scope of § 7428 also limits the permissible remedies. *Basic Unit Ministry of Schurig v. Commissioner*, 670 F.2d 1210 (D.C. Cir. 1982) (explaining denial of unusual relief in case under § 7428).

The relief contemplated by the Court of Appeals here is far afield from that which Congress and the courts have understood was intended under § 7428. Instead of making a determination as to whether the Service's denial of TWRW's application was correct, or should be set aside because the provision upon which it was based was unconstitutional, the Court below directed the District Court to consider issuing limitations on other taxpayers, contemplating a wholesale revision of the Service's administration of §§ 501(c)(4), 501(c)(19), 170, 2055 and 2522 insofar as they apply to veterans' organizations. This is

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[17] *See, e.g., Southwestern Virginia Professional Standards Review Org., Inc. v. United States*, 78-2 U.S.T.C. ¶ 9747 (D.D.C. 1978) (adopting Tax Court Rules limiting scope of *de novo* review to administrative record except in extraordinary circumstances); *Virginia Professional Standards Review Found. v. Blumenthal*, 466 F. Supp. 1164 (D.D.C. 1979) (conforming to Tax Court rules regarding scope of review).

[18] *See, e.g., CREATE, Inc. v. Commissioner*, 634 F.2d 803 (5th Cir. 1981) (no jurisdiction under § 7428 to review adverse determination concerning applicability of percentage limitation to certain contributions to taxpayer); *Urantia Foundation v. Commissioner*, 684 F.2d 521 (7th Cir. 1982) (no jurisdiction under § 7428 to address public support computation of nonprivate foundation).

a tremendous distortion of the nature of the remedial process Congress contemplated in this statute.[19] *Cf.* S. Rep. No. 938, 94th Cong., 2d Sess., 588 (judgments under § 7428 "to be binding upon the parties to the case").

As this Court has recognized in other contexts, when Congress has specifically addressed the question of what remedies are available to vindicate particular statutory rights the Courts should be more than usually hesitant to infer the implied existence of additional or alternative remedies. *See, e.g., Calhoon v. Harvey*, 379 U.S. 134, 139-41 (1964); *National Railroad Passenger Corp. v. National Association of Railroad Passengers*, 414 U.S. 453 (1974); *Securities Investor Protection Corp. v. Barbour*, 421 U.S. 412 (1975); *cf. Chrysler Corp. v. Brown*, 441 U.S. 281, 293 (1979). *See also Cannon v. University of Chicago*, 441 U.S. 677, 731-50 (1979) (Powell. J., dissenting). *A fortiori* is this so when Congress has created a manifestly limited exception to longstanding statutes *precluding* the exercise of jurisdiction, and has used very specific language to define the nature of the declaratory relief that may be granted.[20]

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[19] The type of remedial order contemplated by Congress, in the event of a successful constitutional challenge to the denial of an exemption, is illustrated in *National Alliance v. United States*, 81-1 U.S.T.C. ¶ 9464 (D.D.C. 1981) (where regulation's definition of "educational" void for vagueness, IRS determination that plaintiff not entitled to tax exemption was vacated); *see also Big Mama Rag, Inc. v. United States*, 631 F.2d 1030 (D.C. Cir. 1980).

[20] The statutory language of § 7428, limiting relief to a "declaration with respect to [the] initial qualification" of the petitioning taxpayer, may be contrasted with other remedial statutes considered by this Court. Thus, in *Hecht Co. v. Bowles*, 321 U.S. 321 (1944), the Court held that federal courts were not required to issue injunctions by a provision that, upon a showing by the Administrator of emergency price control violations, "a permanent or temporary injunction, restraining order or other orders shall be granted . . . ." The reference to "other orders," the Court said, made clear that there was room for discretion in the issuance of a remedy. 321 U.S. at 329. *Cf. Porter v. Warner Holding Co.*, 328 U.S. 395 (1946). Here, of course, there is no "other orders" or com-

The remand order, moreover, poses problems going beyond the question of statutory interpretation. As the government noted in its Jurisdictional Statement, the Court of Appeals seems to contemplate that the district court should engage in precisely the kind of legislative hearing and policy determination reserved to Congress. Juris. St. at 11. The remand order does not pose a simple question of whether an equal protection violation arising from an underinclusive statute should be remedied either by extension or by invalidating the entire scheme. The tax code is of sufficient complexity, and the court's decision has thrown into question the constitutionality of so many of its provisions acting in concert, that the case cannot easily be analogized to a more straightforward economic benefit equal protection case.

The remand order here contemplates a major and unprecedented restructuring of the Internal Revenue Code's treatment of exempt organizations. As this Court emphasized in *Califano v. Westcott*, 443 U.S. 76, 93 (1979), a proposed remedy which "would involve a restructuring of the Act" should not be undertaken lightly. *See also Welsh v. United States*, 398 U.S. 333, 366-67 n.18 (1970) (Harlan, J., concurring). Recognizing that, in remedying equal protection violations a court "risks infringing legislative prerogatives," the Court in *Westcott* rejected the effort by the Massachusetts Commissioner of Welfare to obtain a remedial order that would have involved such a restructuring of the AFDC-UF program.[21] The Court spe-

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parable language inviting the courts to stray from the limited form of relief provided for by Congress. *See also Califano v. Yamasaki*, 442 U.S. 682, 705-07 (1979); *Scripps-Howard Radio v. FCC*, 316 U.S. 4, 11 (1942).

[21] The Court there found that a provision authorizing AFDC benefits where the father was unemployed, but not having a similar provision where the mother was unemployed, could not be sustained. The District Court's order, extending the operation of the statute to include unemployed mothers as well as unemployed fathers, was upheld by the Court, which rejected a suggestion by the Massa-

cifically noted that the Commissioner's proposed restructuring "would pose definitional and policy questions best suited to legislative or administrative elaboration." 443 U.S. at 93.

As shown above in Part I, Congress made a deliberate decision to impose lobbying restrictions only on § 501(c)(3) organizations. As the hearings in the 1970's on § 501(h) made clear, Congress was aware that it was legislating in an area affecting protected First Amendment freedoms. *See, e.g.*, Hearings 1976, *supra* note 6, at 61. Particularly where such rights are at issue, a court should be loath to override such a legislative judgment, where the effect of its ruling would be to extend restrictions on otherwise protected activities rather than to remove them. *See United States v. Robel*, 389 U.S. 258, 277-78 (1967) (Brennan, J., conc'g) (need for legislative judgment imperative where exercise of fundamental freedoms involved).

This caution is reinforced by the very cases cited by the Court of Appeals in support of its remand order—none of which support its assertion that "the Supreme Court has recognized [that] in certain situations benefits may be taken away from a preferred group in order to cure unconstitutionally unequal treatment even if that group is not before the court." App. 75a. In *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942), having found a denial of equal protection, the Court struck down the sterilization statute there at issue; it specifically declined to determine whether its unconstitutionality could be cured by extending the category of crimes punishable by sterilization. *Id.* at 543. Similarly, in *Welsh v. United*

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chusetts Commissioner of Welfare that the District Court's order should be modified to provide for payments only where the principal breadwinner (defined without regard to sex) became unemployed. The Court, while noting that such a provision might be more consistent with the legislative purpose, rejected it on the ground that it would have involved a restructuring of the statute prohibited to the judiciary. *Westcott*, 443 U.S. at 92-95.

States, 398 U.S. 333 (1970), the Court reversed the conviction of a conscientious objector whose scruples were not related to belief in a Supreme Being on the ground that the statute, by requiring such a religious belief, was unconstitutionally underinclusive. Justice Black's opinion for the Court nowhere suggests that an appropriate remedy might be to strike down the entire conscientious objector program. Justice Harlan, in a concurring opinion, alluded to the theoretical possibility that an underinclusive statute could be cured by invalidating altogether the benefit it provided, but concluded that the Court there did not have any choice because conscientious objector status for religious objectors was of long standing and represented a congressional policy that would be undermined by striking that benefit. *Id.* at 361, 366-67.[22]

A review of these and other equal protection cases suggests that no support exists for the Court of Appeals' proposition. To the contrary, where statutes imposing restrictions on a particular group have been invalidated on grounds of under-inclusiveness, this Court has followed the practice of striking down restrictions rather than seeking to extend them to a larger group. *See, e.g., Skinner v. Oklahoma, supra*, 360 U.S. at 543; *Williams v. Rhodes*, 393 U.S. 23 (1968). Similarly, statutes providing governmental benefits found to discriminate by virtue of under-inclusiveness, have consistently been extended to cover those complaining that they were unfairly excluded.

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[22] *Iowa-Des Moines National Bank v. Bennett*, 284 U.S. 239 (1931), involved no unconstitutional statute, but an attack by two national banks on the discriminatory *administration* of a state tax provision which resulted in lower taxes on the banks' competitors. The Court, finding that the discrimination contravened a federal statute, ordered that the banks receive a tax refund. The sentence relied on by the Court of Appeals from the opinion in that case, App. 75a, when read in context, does not refer to any issue of remedy at all, but simply states that petitioners there would have had no claim of discriminatory treatment in the first place if the tax burdens had been equalized, either by increase of their competitors' taxes or decrease of their own.

See, e.g., Califano v. Westcott, supra, 443 U.S. at 90-91, and cases cited therein.

A number of underlying bases for this consistent practice can be identified. For a court to deprive a class of persons of a benefit Congress has sought to confer, particularly where those adversely affected are not parties to the litigation, plainly implicates due process considerations not present where the same benefits are extended to others. As this Court has repeatedly made clear, the peculiar authority of courts arises from their jurisdiction over the particular parties whose rights and interests are being adjudicated. *See Hansberry v. Lee,* 311 U.S. 32, 40-41 (1940). The instant proceeding itself well illustrates the dangers of erroneous fact-finding and inadequate argument that arise from adjudication of the rights of nonparties or of seeking to bind such absent parties when they have not been able to participate in the underlying proceeding. *See* p. 16 & n.14, *supra. See also* Fed. R. Civ. Proc. 19 (indispensable parties).[23]

Moreover, the courts have recognized the paramount need, in remedying equal protection violations, to do as little "rewriting" of legislation as possible. *Cf. Aptheker v. Secretary of State,* 378 U.S. 500, 515 (1964). Extending the § 501(c)(3) lobbying restrictions to other organizations would require the Court to "make a new law, not to enforce an old one," a task which is "no part of [the Court's] duty," *United States v. Reese,* 92 U.S. 214,

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[23] In addition, for the courts to begin *extending* restrictive legislation complained of by members of the restricted class would undercut the predicate for standing—the existence of an injury redressable by the relief sought. *See Simon v. Eastern Ky. Welfare Rights Org.,* 426 U.S. 26 (1976). TWRW did not in this case complain that other organizations were allowed to lobby; it complained that it was not. To sustain the remedial order contemplated by the Court of Appeals would entirely divorce the constitutional prerequisite of standing to sue from any limits on the courts' remedial jurisdiction and thus pose further dangers of the courts invading the legislative prerogative.

221 (1875). Striking down the restriction applicable to § 501(c)(3) would not call for such affirmative judicial legislating. The government's policy of according exempt and deductible-eligible status to charitable organizations, including veterans' groups, is beyond question. *Cf. Welsh v. United States*, *supra*, 398 U.S. at 367 n.18 (Harlan, J., conc'g) (important to not frustrate third-party beneficiary legislation). So, too, is Congress' clear intention to treat veterans' organizations differently in some respects from other exempt organizations, and finally, to limit the amounts that § 501(c)(3) charitable organizations may use for lobbying purposes. Yet the remedies proposed by the Court of Appeals would inevitably interfere with most of these congressional policies.

As has been observed in a different context, "[f]ormulation of policy is a legislature's primary responsibility, entrusted to it by the electorate [and the Constitution] . . . Congress has the resources and the power to inform itself, and is the appropriate forum where the conflicting pros and cons should [be] presented and considered." *United States v. Robel*, *supra*, 389 U.S. at 276 (Brennan, J., conc'g). *See also Califano v. Westcott*, *supra*, 443 U.S. at 95-97 (Powell, J., conc'g and diss'g in part). There was substantial sentiment in the 94th Congress for elimination of lobbying restrictions on § 501(c)(3) organizations altogether. *See, e.g.*, Hearings 1976, *supra* n.6, at 57. At the same time, Congress has consistently acted to recognize the special role of veterans' organizations, not only in the tax code but in other federal statutes, *e.g.*, 38 U.S.C. § 3402(a). Under these circumstances, and particularly in the absence of empirical data concerning the likely effect of eliminating lobbying restrictions on the legislative activities of § 501(c)(3) organizations, it would surely be hazardous for a court to seek to predict what choices Congress would make if remedial legislation were necessary. *Comp. Northern Pipeline Construction Co. v. Marathon Pipeline Co.*, 102 S. Ct. 2858, 2880 n.40 (1982) (Court stayed mandate in case finding

bankruptcy courts unconstitutional to permit Congress to remedy problem).

Given the complexity of the tax code, moreover, and the interaction of its numerous provisions to produce the alleged unconstitutional discrimination here, the remand order of the Court of Appeals virtually requires the District Court, in violation of the basic constitutional principle of separation of powers, to engage in legislative functions. For the District Court would not only have to resolve whether to impose lobbying restrictions on veterans' organizations, but would have to resolve difficult issues of how best to accomplish this, since no single provision in the tax code can simply be struck so as to achieve this result. Would, for example, the district court impose a "no substantial lobbying" requirement, modeled on that found in § 501(c)(3), on veterans' organizations seeking to qualify as exempt organizations under §§ 501(c)(4) or (c)(19)? Would it instead insert such a requirement in the deductibility provisions, such as § 170? Would it make available a § 501(h) option for veterans' organizations, and if so, would that be a condition of exempt status or of deductibility? It is difficult to imagine a set of choices more redolent of policy concerns committed under the Constitution to the Congress. And on these issues, as well, it would be difficult in advance of legislative hearings to predict Congress' choices. See *Marchetti v. United States*, 390 U.S. 39 (1968).

What does seem clear, however, is that in this case, unlike those described above, there is a substantial reason to believe that Congress did *not* intend to permit the courts unfettered discretion to engage in wideranging, remedial restructuring of the tax code. Whatever may be the Court's constitutional remedial powers in general federal question litigation, here Congress has spoken on the nature of the remedy it provided under § 7428. Since the ultimate objective in crafting a remedy would be to effectuate Congress' will, and since here, Congress was quite explicit in describing in the jurisdictional statute

what remedial orders could be issued, this Court need not reach the constitutional question to hold that the "most logical" remedy contemplated by the Court of Appeals is not a permissible remedy under the statute.

CONCLUSION

For all these reasons, the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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